

Hon. James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AUBRY MCMAHON,

Plaintiff,

v.

WORLD VISION, INC.,

Defendant.

Case No.: 2:21-cv-00920-JLR

**PLAINTIFF'S RESPONSE TO
DEFENDANT WORLD VISION'S
MOTION TO CLARIFY COURT'S
JULY 24, 2023, ORDER**

Although the parties disagree about the meaning of the Court's July 24, 2023, Order Granting Plaintiff's Motion for Reconsideration, Dkt. No. 44, Plaintiff believes the Order is clear. Plaintiff understands the Court to have held: (1) she had affirmatively proven that Defendant discriminated against her on the basis of sex, sexual orientation, and marital status; (2) the Church Autonomy Doctrine did not bar her claims; and (3) the Court would consider Defendant's remaining affirmative defenses (other than subject matter jurisdiction) and the applicability of *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023), following further briefing. Plaintiff asks the Court to confirm her interpretation of the Order.

Because the Court has denied Defendant's motion (Dkt. No. 46) to the extent it requested reconsideration of the July 24 Order, Plaintiff will not address the assertion that the Court erred by

1 recognizing *Bostock v. Clayton Cty., GA*, 140 S. Ct. 1731, 1741 (2020), is not limited to
2 discrimination purely on the basis of status. Dkt. No. 46 at 7. This argument does not request
3 clarification of the Court’s July 24 Order but rather reconsideration of it. The Court’s July 24 Order
4 correctly applied *Bostock*. See Dkt. No. 24 at 7; Dkt. No. 33 at 3; Dkt. No. 43 at 2.

5 Defendant’s contention that its affirmative defense of lack of subject matter jurisdiction
6 “remains open for argument” is meritless. Dkt. No. 46 at 7. After full briefing, this Court rejected
7 Defendant’s subject matter jurisdiction argument in its initial summary judgment ruling. Dkt. No.
8 38 at 13-14. Defendant filed a motion for reconsideration on August 4, 2023, but did not ask the
9 Court to reconsider its earlier adverse subject matter jurisdiction ruling. Dkt. No. 46 at 1-7. Instead,
10 Defendant asked the Court to allow it to reargue its subject matter jurisdiction defense in future
11 briefing. *Id.* at 8. If Defendant wanted the Court to revisit its earlier subject matter jurisdiction
12 ruling, Defendant should have included that request in the August 4 Motion for Reconsideration,
13 especially given footnote 3 of the Court’s July 24 Order. Plaintiff should not have to re-brief an
14 issue that the Court has already correctly decided in her favor.

15 The crux of the disagreement between the parties as to the import of the Court’s July 24
16 Order is the extent to which Defendant may continue to argue the Church Autonomy Doctrine
17 precludes Plaintiff’s claims. Plaintiff submits that the Court’s holding on this issue could not have
18 been clearer: “With the benefit of additional briefing and further explanation by the parties, the
19 court reverses course and concludes that the Church Autonomy Doctrine does not bar Ms.
20 McMahon’s claims.” Dkt. 44 at 5:8-10. Defendant’s assertion that the Court’s July 24 Order
21 merely vacated “reliance on *Opara/MD*,” Dkt. No. 46 at 8, is incorrect. After recognizing that its
22 earlier summary judgment order had erred by analyzing this case under the *McDonnell Douglas*
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1 framework, the Court then “determine[d] whether the Church Autonomy Doctrine still bars Ms.
2 McMahon’s claims.” Dkt. No. 44 at 10. Applying controlling Ninth Circuit precedent, the Court
3 correctly held that because Plaintiff’s claims could be resolved using neutral principles, the Church
4 Autonomy Doctrine did not preclude her claims. *Id.* at 10-11. Defendant’s contention that the July
5 24 Order analyzed “only the applicability of *Opara/MD*’s test,” Dkt. No. 47 at 1, is wrong.

6 There is also no validity to Defendant’s claim that the Church Autonomy Doctrine should
7 “remain for argument” because the Court’s July 24 Order did not address every one of the cases
8 Defendant had cited in support of its erroneous contention the doctrine barred Plaintiff’s claims.
9 Dkt. No. 46 at 7. The initial summary judgment ruling made clear that the Court had considered
10 “the numerous circuit and district court decisions cited by World Vision that support its contention
11 that the Church Autonomy Doctrine....” precluded Plaintiff’s claims. Dkt. No. 38 at 18; *id.* at 22.
12 The Court then analyzed a number of those cases as well as cases cited by those cases. *Id.* at 20-
13 22. Plaintiff’s Motion for Reconsideration addressed the cases relied upon by Defendant and the
14 Court, *cf.* Dkt. No. 47 at 1, and showed why they did not support application of the Church
15 Autonomy Doctrine here. Dkt. No. 40 at 2-5; Dk. No. 43 at 3-4. The Court has now definitively
16 ruled that the Church Autonomy Doctrine does not bar Plaintiff’s claims and has denied
17 Defendant’s motion for reconsideration of that ruling. Dkt. No. 47. The Church Autonomy
18 Doctrine does not “remain for argument.”

19 Equally unavailing is Defendant’s contention that “neutral principles has not been argued,”
20 Dkt. No. 46 at 7; *see also id.* at 5. Numerous cases that Defendant relied upon, in both its summary
21 judgment briefing and its recent motion for reconsideration, to support its assertion the Church
22 Autonomy Doctrine precludes Plaintiff’s claims hold that the applicability of that doctrine depends
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on whether the dispute can be decided in accordance with neutral or secular principles. *E.g.*, *Butler v. St. Stanislaus Kostka Catholic Academy*, 609 F. Supp. 3d 184, 204 (E.D.N.Y. 2022); *EEOC v. Cath. Univ. of Am.*, 83 F.3d 455, 466 (D.C. Cir. 1996); *Bollard v. California Province of the Society of Jesus*, 196 F.3d 940, 950 (9th Cir. 1999); *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 958-65 (9th Cir. 2004). The Court’s initial summary judgment ruling held that the Church Autonomy Doctrine does not apply where a dispute is capable of being resolved on the basis of neutral principles. Dkt. No. 38 at 16. Plaintiff’s Motion for Reconsideration specifically argued that this case could be decided based on neutral principles. Dkt. No. 40 at 2. In responding to that motion, Defendant had the opportunity to address neutral principles but did not do so. Dkt No. 42. Defendant, however, did brief neutral principles in its now denied motion for reconsideration. Dkt. No. 46 at 4-7. “Neutral principles” has been briefed and the Court determined Plaintiff has established her claims of discrimination using neutral principles of law. Dkt. No. 44 at 10-11. There is no reason for the parties to further brief neutral principles.

Counsels’ July 27 meet and confer revealed the parties had quite different understandings about the meaning of the Court’s July 24 Order. For that reason, Plaintiff agreed with Defendant’s suggestion to defer submission of a proposed briefing schedule until the Court ruled on Defendant’s Motion for Reconsideration/Clarification. Dkt. No. 45. The Court has now denied Defendant’s Motion for Reconsideration. Plaintiff sees no lack of clarity in the Court’s rulings. To alleviate Defendant’s apparent uncertainty, Plaintiff requests the Court issue an order reiterating that (1) the Court has already rejected Defendant’s subject matter jurisdiction and Church Autonomy Doctrine arguments, and (2) what remains for decision are Defendant’s other

1 affirmative defenses and the applicability, if any, of *303 Creative LLC v Elenis*, 143 S. Ct. 2298
2 (2023).

3 RESPECTFULLY SUBMITTED this 11th day of August 2023.

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12 I certify that this memorandum contains 1,133 words in
13 compliance with the Court's August 8, 2023, Order (Dkt
14 47)

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